



COMMONWEALTH OF KENTUCKY
EXECUTIVE BRANCH ETHICS COMMISSION
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Executive Branch Ethics Commission
ADVISORY OPINION 09-10
May 21, 2009

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DANA C. NICKLES
GENERAL COUNSEL

RE: Are legislative agents on the public affairs staff of the Kentucky Chamber of Commerce required to register as executive agency lobbyists?

DECISION: No.

This opinion is issued in response to your January 14, 2009 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). The matter was reviewed at the March 27, 2009 and the May 21, 2009 meetings of the Commission and the following opinion is issued. You seek advice from the Commission regarding whether legislative agents on the public affairs staff of the Kentucky Chamber of Commerce ("Chamber") need to register as Executive Branch lobbyists. You provide the following scenarios to explain your contact with officials of the Executive Branch:

- 1) *The Kentucky Chamber does not currently have any contractual relationship with the Commonwealth of Kentucky, does not bid on state business and does not represent or assist individual companies in efforts to bid on or seek state business. However, from time to time, we may advocate certain business practices by the Commonwealth, for example, that the state should develop purchasing guidelines that do not discriminate against in-state businesses which have products and services to sell. We may write letters or initiate meetings with administrative staff of executive branch agencies to advocate such policies.*
- 2) *We are periodically asked by the Governor's Office to **nominate business people to serve on various state boards and commissions** (usually because legislation requires nominations from the Kentucky Chamber or a "statewide business organization"). Should we be executive branch lobbyists to nominate persons for those positions or to extemporaneously nominate persons (whether solicited or not) whom we feel would be good candidates for boards and commissions?*

- 3) *We periodically initiate **private meetings and/or meals with administration officials (with each person paying for his/her meal)**, often seeking to provide input on or to advocate various policies. For example, we might meet with a Cabinet Secretary to advocate that the Governor appoint a blue-ribbon task force to tackle a particular public issue or that the Governor call a special session of the Legislature to deal with a special topic.*
- 4) *We are currently working with the Department of Public Health in an effort to promote private wellness programs at various workplaces in Kentucky (especially among the 2700 members of the Kentucky Chamber). While we receive no state money for those efforts, a consultant who is under contract with the Bourbon County Health Department (which we assume receives funding from the state) has been made available to work with our business members – as well as other non-chamber-member businesses across the state. **Periodically we meet with state public health officials to collaborate on our wellness efforts and to advocate state involvement in workplace wellness.** Does this represent a “lobbying” relationship with the Executive Branch?*
- 5) *The Kentucky Chamber periodically appoints a task force made up of business leaders across the state, to study a particular issue (e.g. our 2007 Postsecondary Education Study) and to render various recommendations to the Governor, the Legislature and to various agencies (e.g. the Council of Postsecondary Education) on how to improve higher education in Kentucky. Naturally, I and others on our public affairs staff would advocate those positions to the Governor, the Legislature, various agencies, etc. Does this constitute “a significant effort to influence public policy” and require registration?*

You have also stated that only about ten percent of your time is dedicated to “lobbying” the Executive Branch, while only about five percent of the Chamber’s other lobbyists’ time is dedicated to the Executive Branch, and further stated that the “lobbying” done by the chamber is almost exclusively limited to policy matters such as suggesting how administrative functions of state government could be better deployed and budget policy matters, rather than lobbying for a financial benefit to the Chamber or for an individual contractor.

Not all lobbying requires registration as an executive agency lobbyist. KRS 11A.201(8)(a) defines “executive agency lobbyist” as any person engaged to influence **executive agency decisions** or to conduct **executive agency lobbying activity** as one (1) of his **main purposes** on a substantial basis. (Emphasis added). An “executive agency decision” is defined in KRS 11A.201(7) as a **decision of an executive agency regarding the expenditure of funds** of the state or of an executive agency with respect to the award of a contract, grant, lease, or other financial arrangement under which those funds are distributed or allocated. (Emphasis

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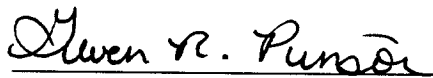
Page Three

added). KRS 11A.201(9)(a) provides that “executive agency lobbying activity” means contacts made to promote, oppose, or otherwise influence the outcome of an **executive agency decision** by direct communication with an elected executive official, the secretary of any cabinet listed in KRS 12.250, any executive agency official, or a member of the staff of any one of the officials listed in this paragraph. (Emphasis added). KRS 11A.201(9)(b)(3) further provides that appearances before public meetings of executive agencies is not considered executive agency lobbying activity.

Based on these definitions, it does not appear that any of the activities you describe in your letter would be considered executive lobbying activities. While in a broader sense you and your coworkers may be “lobbying” for the purpose of persuading individuals within the Executive Branch to take certain actions or pursue certain policies, you would not be considered executive agency lobbyists as that term is defined in the Executive Branch Code of Ethics. Furthermore, you have asserted that only a small percentage of your time is dedicated to the Executive Branch, where KRS 11A.201(8)(a) states that in order to be considered an “executive agency lobbyist” you must be engaged to influence executive agency decisions or to conduct executive agency lobbying activity as one of your “main purposes”. This does not appear to be the case. It is therefore the opinion of the Commission, based on the information you provided and the scenarios you described, that you and your coworkers are not required to register as Executive Agency Lobbyists.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: Gwen R. Pinson